

JAMES LARK ET AL.
 vs.
 LANDAY LINSTED ET AL. } SEPTEMBER TERM, 1850.

JURISDICTION—LEGACY—EVIDENCE—AUTHORITY OF EXECUTOR TO DISPOSE OF ASSETS—ACT OF 1834, CH. 304.

The jurisdiction of chancery in regard to legacies is undoubted, and is exercised as a matter of trust.

No action will lie at law to recover a specific legacy unless the executor has assented thereto, or in the case of a pecuniary legacy unless the executor has promised to pay it, but a court of equity, regarding the executor as a trustee, will compel him to assent and pay the legacy.

Evidence of declarations made by a vendor after a sale out of the presence of the vendee, in reference to the title of thing sold, declared inadmissible.

Where a sole executor is at the same time guardian, the law will adjudge his ward's proportion of the estate to be in his hands, as guardian, after the expiration of the time fixed by law for the settlement of the estate, whether he has passed a final account as executor or not.

But it does not, therefore, follow that the authority of the executor to dispose of the estate of his testator, terminates in every case on the expiration of the period limited for the passage of the final account.

Before the act of 1843, ch. 304, executors, &c., might dispose absolutely of the whole personal estate of a deceased person, and neither creditors nor legatees could pursue the property in the hands of the purchaser, except where collusion was proved between the purchaser and the executor, &c.

[The bill, in this case, was filed on the 28th of October, 1849, by the complainants as the legatees in reversion of Greenbury Lark, praying for the sale of a negro which was purchased by the defendant, Linstead, in the year 1829, from Amelia Lark, the widow, executrix and legatee for life of the said Greenbury. It alleges, that the said Amelia could only have sold her *life estate* in the said boy, as the estate of her husband had been settled up before the said sale by the said executrix. They also pray for an account of the hires of the said boy since the death of the said Amelia.

The defendant, Linstead, filed his answer, which is sufficiently set forth in the Chancellor's opinion. Testimony was taken and returned. The defendant, Linstead, excepted to so much of the testimony as relates to the declarations of Mrs. Lark,